



Attachment A – Special Terms & Conditions
Ciena Brand Name Networking – Statewide Contract
Contract No. 4400016808 T-No. 92853 YT

STATEWIDE BRAND NAME CONTRACT FOR CIENA BRAND NAME INFORMATION TECHNOLOGY/TELECOMMUNICATIONS NETWORKING PRODUCTS, TO INCLUDE HARDWARE, SOFTWARE, MANUFACTURER MAINTENANCE, MANUFACTURER CERTIFIED INSTALLATION AND INITIAL SOFTWARE CONFIGURATION SERVICES

1. SCOPE OF PRODUCTS AND SERVICES

All items to be furnished must be the manufacturer's current state-of-the-art and must be certified to be in current new production. All items delivered under the contract must be new. Refurbished items are not acceptable for new purchases.

All items furnished, including hardware components within any system configuration, must be the brand specified.

2. NON-EXCLUSIVE CONTRACT

This contract is non-exclusive and shall not in any way preclude the State from entering into similar contracts and/or arrangements with other vendors or from acquiring similar, equal or like goods and/or services from other entities or sources.

3. COOPERATIVE PURCHASE

As described below, Political Subdivisions of the State, Quasi State Agencies, External Procurement Units, and Agencies of the United States Government are to be authorized (potential) users of the contract subject to the pricing and terms set forth in the contract.

- Political Subdivisions of the State include, but are not limited to, parish governments, municipal governments, school districts, human service districts, local governments and public utilities.
- Quasi State Agencies include, but are not limited to, non-profit or for-profit organizations created by the State of Louisiana or any political subdivision or agency thereof, or any special district or authority, or unit of local government, to perform a public purpose.
- External Procurement Units include, but are not limited to, buying organizations not located in the State of Louisiana, which, if located in the State, would qualify as a public procurement unit.

The current list of approved cooperating purchasing entities (including political subdivisions, quasi state agencies and external procurement units) is maintained and regularly updated on the OSP website at: <http://www.doa.la.gov/pages/osp/contacts/approvedquasiunits.aspx> and may be used as a reference.

Contractors may prospectively choose to partially or entirely 'opt-out' of accommodating cooperative purchasing for such contract by sending formal written notification of same to the Office of State Procurement. This notification should clearly specify which individual type(s) of cooperative purchasing entities the contractor is choosing to not allow to participate in contract cooperative purchasing. Any purchase orders received by the contract-holder from cooperative purchasing entities prior to the contract-holder's opt-out notification to OSP must be honored in accordance with the contract.

4. E-RATE

For qualified purchases, the Contractor shall participate in the E-RATE program on the behalf of all qualified State entities and for qualified services as required, and should document his participation by stating his Service Provider Identification Number (SPIN) here 143004812.



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E-Rate Qualified Entities/Services shall send orders directly to the Contractor. The Contractor shall be responsible for verifying the eligibility and E-Rate discount applicable to the entity ordering the services.

Invoices for E-Rate Qualified Entities/Services, Quasi-State agencies, and political subdivisions shall be sent to the ordering agency.

The Contractor shall bill E-Rate Qualified Entities/Services separately from State agencies, and shall be responsible for submitting requests to the Universal Service Fund for reimbursement for qualified services provided to E-Rate Qualified Entities/Services.

E-Rate Qualified Entities/Services, Quasi-State agencies, and political subdivisions shall be responsible for payment of their invoice.

5. F.O.B.

Destination: All prices and terms shall be net.

6. USAGE

Quantity for these items is shown as one (1). Agencies may issue orders for individual items in quantities of one (1) or greater.

7. DELIVERY

Deliver to any agency of the State government eligible by State statute and/or authorized to purchase from the contract. Delivery is to be made upon the issuance of a purchase order.

Contractors will have access to an adequate supply of all items in order to meet deliveries of not more than ninety (90) business days.

8. RISK OF LOSS/PASSAGE OF TITLE

Title to the equipment purchased under the Contract shall pass from Contractor to State on the date of installation for Contractor-installed equipment or on the date of delivery for State-installed equipment. Prior to the passage of title all risk of loss or damage shall be on the Contractor.

9. TERMS AND CONDITIONS

The contract contains all terms and conditions with respect to the commodities herein.

The purchase order is the only binding document to be issued against the contract. Signing of Contractor's pre-printed forms is not allowed.

10. ORDERS

All State Agencies are directed to issue contract purchase orders for a supply of the items required, as and when needed. Political Subdivisions of the State and Quasi Agencies who have been authorized to purchase from contracts made by the Office of State Procurement, are directed to issue their regular purchase orders directly to the supplier, making reference to the contract and line item numbers.



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11. INVOICE

Invoices will be submitted by the Contractor to the using agency as indicated on the purchase order and the invoice should refer to the delivery ticket number, delivery date, purchase order number, quantity, unit price, net discount and delivery point. A separate invoice for each order delivered and accepted should be submitted by the Contractor in duplicate directly to the accounting department of the using Agency. Invoices shall show the amount of any cash discount and shall be submitted on the Contractor's own invoice form.

State Agencies are directed to pay the Contractor upon presentation of a properly executed invoice after goods have been received, inspected and accepted. Invoices will be paid within thirty (30) days of receipt of a properly executed invoice, or receipt of goods, whichever is later. Payment will be made on the basis of unit price net discount as listed in the contract or the invoiced price, whichever is lower. Such price and payment will constitute full compensation for furnishing and delivering the requested contract commodities. In no case will the State Agency refuse to make partial payments to the Contractor although all items have not been delivered. This payment in no way relieves the Contractor of his responsibility to effect shipment of the balance of the order nor to provide the requested installation and/or initial software configuration services.

PAYMENTS WILL BE MADE TO THE VENDOR AND TO THE ADDRESS AS SHOWN ON THE PURCHASE ORDER. ADVANCED PAYMENTS WILL NOT BE ALLOWED IN THE CONTRACT.

12. LATE PAYMENTS

Interest due by a State Agency for late payments shall be in accordance with La. R.S. 39:1695 at the rates established in La. R.S. 13:4202.

13. CONTRACT PERIOD

The Contract will be effective for a period of twelve (12) months, beginning April 3, 2021 and ending April 2, 2022 unless, otherwise terminated in accordance with the termination provisions of the contract.

14. USAGE/REPORTING REQUIREMENTS

Brand Name Contracts for Networking Products are expected to have \$50,000.00 usage annually. This usage amount may be waived in whole or in part due to extenuating circumstances, in the State's best interest. The Office of State Procurement will consider contract purchases from both State Agencies and Political Subdivisions. The inability or failure to timely produce usage reports evidencing adequate sales may result in the cancellation of your brand name contract for a period of two (2) years.

The Contractor shall submit detailed contract usage reports **quarterly** to the State Procurement Analyst (SPA) for the contract in accordance with the below schedule. Initiation and submission of the quarterly reports to the SPA is the responsibility of the Contractor without prompting or notification by the SPA. If these reports are not submitted in a timely manner, the Office of State Procurement (OSP) shall have the right to terminate the contract.

The specific usage report content, scope, and format requirements are available on the OSP website under Purchasing/Vendor Center/Vendor Forms:

<http://www.doa.la.gov/pages/osp/vendorcenter/forms/index.aspx>.

In addition, the person's name who compiled the report and their contact information shall be provided. OSP reserves the right to request copies of any purchase orders issued against the contract.

The usage reports shall be submitted utilizing this format or an equivalent format that has been pre-approved by OSP.



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Schedule for submittal of usage reports:

<u>Quarter</u>	<u>Reporting Period</u>	<u>Due Date</u>
First Quarter	July 1 through September 30	October 31
Second Quarter	October 1 through December 31	January 31
Third Quarter	January 1 through March 31	April 30
Fourth Quarter	April 1 through June 30	July 31

15. ADMINISTRATIVE FEE OR REBATE

The Contractor shall pay a 1% administrative fee or rebate to be payable to the State of Louisiana, Office of State Procurement (OSP). The administrative fee or rebate shall be submitted quarterly and shall be based on the total net (gross sales minus returns, credits and deductions) sales made to entities located in the State of Louisiana under the contract. Initiation and submission of the administrative fee or rebate to OSP is the responsibility of the Contractor without prompting or notification by the State Procurement Analyst (SPA). If these administrative fees or rebates are not submitted in a timely manner, OSP shall have the right to terminate the contract.

The check is to be made payable to: Louisiana DOA - Office of State Procurement. The check is to be mailed to the Office of State Procurement, Attn: OSP Receivables Specialist, either through the U. S. Postal Service to OSP's box at: P. O. Box 94095, Baton Rouge, LA 70804-9095, or through a courier service to OSP's physical location at: 1201 North 3rd Street, Suite 2-160, Baton Rouge, LA 70802. The calculation of the administrative fee or rebate shall begin immediately upon execution of the contract and payment shall be made in accordance with the following schedule:

<u>Quarter</u>	<u>Payment Period</u>	<u>Payment Due Date</u>
First Quarter	July 1 through September 30	October 31
Second Quarter	October 1 through December 31	January 31
Third Quarter	January 1 through March 31	April 30
Fourth Quarter	April 1 through June 30	July 31

NOTE: CONTRACTOR SHALL INDICATE STATE CONTRACT NUMBER 4400016808 ON THE REMITTANCE. WHEN SUBMITTING ONE (1) REMITTANCE FOR MORE THAN ONE (1) CONTRACT, CONTRACTOR SHALL INDICATE ALL STATE CONTRACT NUMBERS AND THE AMOUNT FOR EACH.

16. PRICING

This contract will be limited to items with an individual net price of \$49,999.00 or less.

17. IT/TELECOM NETWORKING PRODUCT CATEGORIES

Category 1 - Networking Software – Software that runs on a server and enables the service to manage data, users, groups, security, applications and other networking functions. The network operating system is designed to allow shared file and printer access among multiple computers in a network, typically a local area network (LAN), a private network or to other networks.

Category 3 - Optical Networking – High capacity networks based on optical technology and components that provide routing, grooming and restoration at the wavelength level as well as wavelength based services.

Category 7 - Switches – Layer 2/3 devices that are used to connect segments of a LAN (local area network) or multiple LANs and to filter and forward packets among them.



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Category 9 - Manufacturer Maintenance Plans – The contractor should offer a complete listing of all Manufacturer Maintenance Plans available, by product category, to include but not necessarily to be limited to: drop shipped advanced replacements of parts, software patches and revisions issued to resolve known defects or vulnerabilities, access to online and live body technical assistance, advanced replacement of parts with required installation/software configuration support to facilitate replacement.

18. CONTRACTOR'S RESPONSIBILITY

During the course of the contract, any price reduction in the Manufacturer's Published Prices must be immediately extended to the State by the Contractor. Failure to offer the benefit of these price reductions to the State within two (2) weeks after general announcement may result in the cancellation of the contract. These price reductions must be granted on any order not shipped. Contractor must maintain a list of equipment on order and be able to provide a list to the Office of State Procurement within 48 hours of the request.

Only brand names and numbers stated in the contract are approved for delivery under the contract and any substitution must receive prior written approval of the Office of State Procurement.

Vendor List: If additional vendors are authorized to receive purchase orders for items contained in said contract, the Contractor must submit a list of those additional authorized distributors. The prime Contractor will be responsible for the actions of any distributor vendors listed.

Single Point of Contact:

At a minimum, the Contractor shall assign one (1) person and at least one (1) backup within the Contractor's organization to serve as a primary contact person for contract related activities. These activities include but are not limited to: resolution of contract issues, all pre-sale and post-sale activities, including system configuration and implementation, order processing and status, billing-related issues, operating feature and function questions of the products on contract, training coordination. This designated contact person should be prepared to handle routine tasks, answer inquiries, and resolve problems that arise on a daily basis. The Contractor shall keep the contact list current during the term of the contract and provide updates to the Office of State Procurement.

19. TECHNICAL SUPPORT

All installation and software configuration services provided under the contract shall be performed by manufacturer certified technicians.

20. WARRANTY

The contractor shall provide the standard warranty offered by the manufacturer for the products in the contract.

21. CONTRACT UTILIZATION

The contract has been designated as a Louisiana Pricing Schedule ("LaPS"). The state intends to use the following process before placing orders under the contract, and the contractor explicitly understands and agrees to the use of this process before accepting orders under the contract. Where multiple LaPS contracts exist for functionally equivalent products and/or services and the procurement is above \$25,000.00, all eligible users of these contracts will utilize the following procedures:

- 1) Prepare a Request for Responses (an informal process used to make a best value determination) that includes, if applicable:
 - A) Performance-based statement of work that includes such things as:
 - The work to be performed



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- Location of work
 - Period of Performance
 - Deliverable schedule
 - Applicable performance standards
 - Acceptance criteria
 - Any special requirements (e.g., security clearances, special knowledge, etc.)
 - The products required (using a generic description of products and functions whenever possible).
- B) If necessary or applicable, a request for submittal of a project plan for performing the task and information on the contractor's experience and/or past performance performing similar tasks.
- C) A best value determination is one that considers, in addition to underlying contract pricing, such factors as:
- Probable life of the item selected
 - Environmental and energy efficiency considerations
 - Technical qualifications
 - Delivery terms
 - Warranty
 - Maintenance availability
 - Administrative costs
 - Compatibility of an item within the user's environment
 - User's familiarity with the item or service
- D) A request for submittal of a firm-fixed total price for labor and/or products which are no higher than prices in the LaPS contract.
- 2) Submit the Request for Response to at least three (3) LaPS contract holders, whenever available, offering functionally equivalent products and/or services that will meet the agency's needs.
- 3) Evaluate responses and select the contractor to receive the order:
- A) After responses have been evaluated, the order shall be placed with the contractor that represents the best value that meets the agency's needs. The ordering agency should give preference to small entrepreneurships or small and emerging businesses when two or more contractors can provide the services and/or products at the same firm-fixed price.
 - B) The ordering agency shall document in the procurement file the evaluation of the contractors' responses that formed the basis for selection. The documentation shall identify the contractor from which the services and/or products were purchased, the services and/or products purchased, and the cost of the resulting purchase order.
 - C) Purchases shall not be artificially divided to avoid the requirements of this section when recurring requirements for same products are known.

22. INDEMNIFICATION AND LIMITATION OF LIABILITY

Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under this contract.

Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold harmless the State from suits, actions, damages and costs of every name and description



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relating to personal injury and damage to real or personal tangible property caused by Contractor, its agents, employees, partners or subcontractors, in the performance of this contract without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the State.

Contractor shall indemnify, defend and hold the State harmless, **without limitation**, from and against any and all damages, expenses (including reasonable attorneys' fees), claims judgments, liabilities and costs which may be fully assessed against the State in any action for infringement of a United States Letter Patent with respect to the products, materials or services furnished by Contractor under its bid response and the contract, or of any copyright trademark, trade secret or intellectual property right, provided that the State shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State may require Contractor at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner of Administration shall require.

The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon: (i) State's unauthorized modification or alteration of the products or materials; (ii) State's use of the products or materials in combination with other products or materials not furnished by Contractor; (iii) State's use of the products or materials in other than the specified operating conditions and environment.

In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion as the State's exclusive remedy to take action in the following order of precedence: (i) to procure for the State the right to continue using such item(s) or part(s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the State up to the dollar amount of the product or material.

For all other claims against the Contractor where liability is not otherwise set forth in the contract as being "without limitation", and regardless of the basis on which the claim is made, Contractor's liability **for direct damages, shall be the greater of \$100,000, the dollar amount of the products or materials, or two (2) times the charges for services rendered by the Contractor under the contract.** Unless otherwise specifically enumerated herein mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records, even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.

The State may, in addition to other remedies available to it at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

23. INSURANCE TYPES AND AMOUNTS

Contractor agrees to provide the State of Louisiana with Certificates of adequate insurance indicating coverage of required herein.

Insurance shall be placed with insurers with an A.M. Best's rating of no less than A-:VI. This rating requirement shall be waived for Worker's Compensation coverage only.

Contractor's Insurance: The Contractor shall not commence work under this contract until he has obtained all insurance required herein. Certificates of Insurance, fully executed by officers of the Insurance Company written or countersigned by an authorized Louisiana agency, shall be filed with the State of Louisiana for approval. The Contractor shall not allow any sub-Contractor to commence work on his subcontract until all similar insurance



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required for the subcontractor has been obtained and approved. If so requested, the Contractor shall also submit copies of insurance policies for inspection and approval of the State of Louisiana before work is commenced. Said policies shall not hereafter be canceled, permitted to expire, or be changed without thirty (30) days notice in advance to the State of Louisiana and consented to by the State of Louisiana in writing and the policies shall so provide.

Compensation Insurance: Before any work is commenced, the Contractor shall take out and maintain during the life of the contract, Workers' Compensation Insurance for all of the Contractor's employees employed at the site of the project. In case any work is sublet, the Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance for all of the latter's employees, unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in work under the contract at the site of the project is not protected under the Workers' Compensation Statute, the Contractor shall provide for any such employees, and shall further provide or cause any and all subcontractors to provide Employer's Liability Insurance for the protection of such employees not protected by the Workers' Compensation Statute.

Commercial General Liability Insurance: The Contractor shall take out and maintain during the life of the contract such Commercial General Liability Insurance which shall protect him, the State, and any subcontractor during the performance of work covered by the contract from claims or damages for personal injury, including accidental death, as well as for claims for property damages, which may arise from operations under the contract, whether such operations be by himself or by a subcontractor, or by anyone directly or indirectly employed by either of them, or in such a manner as to impose liability on the State. Such insurance shall name the State as additional insured for claims arising from or as the result of the operations of the Contractor or his subcontractors. In the absence of specific regulations, the amount of coverage shall be as follows: Commercial General Liability Insurance, including bodily injury, property damage and contractual liability, with combined single limits of \$1,000,000.

Insurance Covering Special Hazards: Special hazards as determined by the State shall be covered by rider or riders in the Commercial General Liability Insurance Policy or policies herein elsewhere required to be furnished by the Contractor, or by separate policies of insurance in the amounts as defined in any Special Conditions of the contract included therewith.

Licensed and Non-Licensed Motor Vehicles: The Contractor shall take out and Maintain during the life of the contract, Automobile Liability Insurance in an amount not less than combined single limits of \$1,000,000 per occurrence for bodily injury/property damage. Such insurance shall also cover the use of any non-licensed motor vehicles engaged in operations within the terms of the contract on the site of the work to be performed thereunder, unless such coverage is included in insurance elsewhere specified.

Subcontractor's Insurance: The Contractor shall require that any and all subcontractors, which are not protected under the Contractor's own insurance policies, take and maintain insurance of the same nature and in the same amounts as required of the Contractor.

24. ASSIGNMENT

The Contractor shall not assign any interest in the contract by assignment, transfer or novation without prior written consent of the State. This provision shall not be construed to prohibit the Contractor from assigning his bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the State.

25. RIGHT TO AUDIT

The State Legislative auditor, federal auditors and internal auditors of the Division of Administration, or others so designated by the DOA, shall have the option to audit all accounts directly pertaining to the contract for a period of five (5) years from the date of final payment or as required by applicable State and Federal Law. Records shall be made available during normal working hours for this purpose.



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28. TERMINATION FOR NON-APPROPRIATION OF FUNDS

The continuation of the contract is contingent upon the continuation of an appropriation of funds by the Legislature to fulfill the requirements of the contract. If the Legislature fails to appropriate sufficient monies to provide for the continuation of a contract or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act to prevent the total appropriations for the year from exceeding revenues for that year or for any other lawful purpose and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which funds were appropriated.

27. WAIVER CLAUSE

Waiver of any breach of any term or condition of the contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of the contract shall be held to be waived, modified, or deleted except by the written consent of both parties.

28. SEVERABILITY

If any term or condition of the contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application; to this end, the terms and conditions of the contract are declared severable.

29. CODE OF ETHICS

The Contractor acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (R.S. 42:1101 et. seq., Code of Governmental Ethics) applies to the Contracting Party in the performance of products/services called for in the Contract. The Contractor agrees to immediately notify the State if potential violations of the Code of Governmental Ethics arise at any time during the term of the Contract.

30. APPLICABLE LAW

The contract shall be governed by and interpreted in accordance with the laws of the State of Louisiana. Venue of any action brought with regard to the contract shall be in the Nineteenth Judicial District Court, parish of East Baton Rouge, State of Louisiana.

31. CONTRACT CONTROVERSIES

Any claim or controversy arising out of the contract shall be resolved by the provisions of Louisiana Revised Statutes 39:1673.



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PRICING

<u>CATEGORIES:</u>	<u>PERCENT DISCOUNT</u>
Category 1 - Networking Software	<u>60%</u>
Category 3 - Optical Networking	<u>60%</u>
Category 7 - Switches	<u>60%</u>
Category 9 Manufacturer Maintenance Plans	
• Category 1	<u>60%</u>
• Category 3	<u>60%</u>
• Category 7	<u>60%</u>

INSTALLATION:

Installation:	hourly rate \$ <u>\$ 115</u>
Initial software configuration:	hourly rate \$ <u>\$ 208</u>